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OFFICE OF PETITIONS

In re Application of	:	
GARAH et al.	:	DECISION ON PETITION
Application No. 09/825,537	:	
Filed: 04/02/2001	:	
Attorney Docket No. ODS/025	:	

This is a decision on the petition under 37 CFR 1.181, filed July 2, 2007, to withdraw the holding of abandonment in the above-identified application.

On February 2, 2007, the Office mailed a Notice of Panel Decision from Pre-Appeal Brief Review ("decision"), indicating that a Pre-Appeal Brief conference was held and that the application remained under appeal because there was at least one actual issue for appeal. The decision stated that applicants were required to submit an appeal brief in accordance with 37 CFR 41.37 and that the time period for filing the appeal brief would be reset to be one month from the mail date of the decision, or the balance of the two-month time period running from the receipt of the notice of appeal, *whichever* was greater. The decision further indicated that the time period for filing of the appeal brief was extendable under 37 CFR 1.136 based upon the mail date of the decision or the receipt date of the notice of appeal, as applicable. On May 18, 2007, the Office mailed a Notice of Abandonment, stating that the application was abandoned in view of applicants' failure to file a reply to the Office letter mailed on February 2, 2007. On July 2, 2007, applicants filed the present petition.

Applicants assert that the Examiner mailed the Notice of Abandonment in error and request that the Office withdraw the holding of abandonment. Specifically, applicants state that the final due date for filing the appeal brief, with a request for an extension of time for response within the fifth month, is August 2, 2007. Furthermore, applicants argue the appeal brief filed on July 2, 2007, accompanied by a request for an extension of time for response within the fourth month and the requisite fees, is timely.

Upon a review of the record, applicants' assertions are correct. As previously stated, the decision set a one-month extendable period from February 2, 2007 (the mail date of the decision), for applicants to submit an appeal brief. Accordingly, applicants were permitted to extend the period for response up to five months under 37 CFR 1.136(a) (i.e. on or before August 2, 2007).

After a further review of the record, the Office concurs with applicants that the appeal brief of July 2, 2007, accompanied by the request for a four-month extension of time, is timely filed. Accordingly, the Notice of Abandonment was mailed in error.

The petition to withdraw the holding of abandonment is **granted**. The application is restored to pending status in view of the fact that a reply was timely filed on July 2, 2007.

This matter is being referred to Technology Center Art Unit 3692.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3211.

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